

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No. 44 of 2003

State of Orissa

..... Appellant
Mr. S.S. Kanungo, AGA

-versus-

Thumpu @ Harikhena Hembram

Respondent
Ms. Dr. Sujata Dash, Advocate

CORAM:
JUSTICE S. TALAPATRA
JUSTICE B.P. ROUTRAY

ORDER
05.07.2022

Order No.

09.

1. This matter is taken up through hybrid mode.
2. Heard Mr. S.S. Kanungo, learned counsel appearing for the State-Applicant as well as Ms. Dr. S. Das, learned counsel appearing for the Respondent.
3. This an application under Section 378(1) and (3) of the Cr.P.C. for granting leave to file an appeal against the judgment of acquittal dated 20.12.2002 delivered in S.T. No.20/196 of 2002-20021 by the Addl. District and Sessions Judge (Fast Track Court), Baripada.
4. Mr. S.S. Kanungo, learned Additional Government Advocate has submitted before us that the analogy for discarding the evidence of P.W.5, in particular, who happens to be the husband of the deceased is unsustainable in as much as the insignificant incongruities, the eye witness account of the occurrence can be brushed aside.

5. According to the Trial Judge, the testimony of P.W.5 turns unreliable. From verification it would appear that he had gone to the house of the accused and asked for payment of wages for that day. But the accused was non-responsive. Thereafter, when he was talking to Laxman Hembram, brother of the accused, all of a sudden, the accused assaulted his wife on her head with a bamboo 'Kurunda'. He struck successively. His wife fell down on the ground.

6. According to Mr. S.S. Kanungo, learned Additional Government Advocate, the reasons as assigned by the Trial Judge for discarding the said testimony cannot be accepted, as P.W.5 has truthfully stated that, the accused dealt three blows on his wife's head and as a result, she fell down on the ground, losing her sense and there was profuse bleeding. While the injured was lying on the spot, he rushed to the house of one Homeopathic doctor, who refused to come at night. When he returned to his house, his wife had been removed from the spot to his residence. In the morning he again went to the house of the said Homeopathic doctor that time he had agreed to come. The doctor examined the injured and asked P.W.5 to take her to the hospital. Accordingly, the injured was shifted to D.H.H., Baripada. After 6/7 days of the occurrence, she succumbed to the injury. Mr. Kanungo, learned Additional Government Advocate has strenuously argued that, there is no earthly reason to disbelieve that account, but that evidence has been most unceremoniously discarded stating that there are serious inconsistency in the

statement, for which reliability of P.W.5 has been seriously diminished.

7. Ms. Dr. S. Dash, learned counsel appearing for the Respondent has submitted that the sufficient reasons have been laid by the Trial Judge for not relying P.W.5. In particular, she has referred to the cross-examination of P.W.5.

8. The relevant part from the cross examination, we would like to reproduce for purpose of reference. P.W.5 has stated in the cross-examination unambiguously that *“when I came to the house of the accused, I saw my wife lying on the ground in injured condition. She was not in her sense, when I came near her”*. In the face of the above statement, according to Dr. Dash, learned counsel, the P.W.5 can be treated as the eye-witness. At best, he can be deemed as a post-occurrence witness. No wrong therefore has been committed by the Trial Judge for disbelieving P.W.5.

9. No other eye witnesses, even, there is no incriminating circumstantial evidence has been brought on records by which the hypothesis of innocence of the accused can be established.

10. We have gone through the records meticulously and found sufficient force in the submission of Dr. Dash, learned counsel appearing for the Respondent. It is our considered view that, no leave should be granted to the State as they prove that the appreciation, as challenged, is perverse. As

consequence, no appeal can be allowed to be filed against the said judgment of acquittal.

(S. Talapatra)
Judge

(B.P. Routray)
Judge

Murmu

